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**North American Enclosures, Inc. and Local 348-S,
United Food and Commercial Workers Union,
AFL-CIO. Case 29-CA-26679**

July 29, 2005

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND SCHAUMBER

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on December 13, 2004,¹ the General Counsel issued the complaint on February 23, 2005, alleging that the Respondent has violated Section 8(a)(1) and (5) of the Act by refusing the Union's request to bargain following the Union's certification in Case 29-RC-10007. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On June 29, 2005, the Acting General Counsel filed a Motion for Summary Judgment. On July 1, 2005, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent did not file a response.

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain, but contends that the Union's certification is invalid because the Board erred in overruling its objections to the election in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We

¹ The Respondent's answer "denies knowledge or information sufficient to form a belief as to the truth of the allegations" concerning the filing and service of the charge. The Acting General Counsel, however, has attached as exhibits to his motion a copy of the charge and affidavit of service of the charge. The Respondent has not challenged the authenticity of these documents. Accordingly, it is clear that the charge was filed and served as alleged, and we find that the Respondent's denials in this regard do not raise any issue of fact warranting a hearing.

therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Acting General Counsel's Motion for Summary Judgment.²

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a domestic corporation with its principal office and place of business located at 65 Jetson Lane, Central Islip, New York, and other facilities located at 85 Jetson Lane and 973 Motor Parkway, Central Islip, New York, has been engaged in the manufacture, assembly, and wholesale distribution of picture frames and framed art.

Annually, in the course and conduct of its operations, the Respondent purchases and receives at its Central Islip facilities goods, supplies, and materials valued in excess of \$50,000 directly from points located outside the State of New York.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that Local 348-S, United Food and Commercial Workers Union, AFL-CIO (the Union) is a labor organization within the meaning of Section 2(5) of the Act.³

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held April 24, 2003, the Union was certified on October 27, 2004, as the exclusive col-

² The Respondent's request that the complaint be dismissed is therefore denied.

Chairman Battista did not participate in the Board's March 17, 2004 Decision and Order Directing Hearing in the underlying representation proceeding, and Member Schaumber did not participate in the Board's October 27, 2004 Decision and Certification of Representative in the representation proceeding. They agree, however, that the Respondent has not raised any new matters or special circumstances warranting a hearing in this proceeding or reconsideration of the decisions and orders in the representation proceeding, and that summary judgment is therefore appropriate.

³ In par. 5 of its answer, the Respondent denies sufficient knowledge or information regarding the Union's status as a labor organization within the meaning of Sec. 2(5) of the Act. However, in the underlying representation proceeding, the Respondent stipulated that the Union is a labor organization within the meaning of the Act. Accordingly, we find that the Respondent's answer in this regard does not raise any issue warranting a hearing in this proceeding. See, e.g., *Spruce Co.*, 321 NLRB 919 fn. 2 (1996), and cases cited there. In light of this, we find it unnecessary to pass on the Acting General Counsel's request that we strike par. 5 of the Respondent's answer.

lective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time production and maintenance, shipping and receiving, plant clerical employees, and drivers employed by the Respondent at its premises located at 65 Jetson Lane, 85 Jetson Lane, and 973 Motor Parkway, Central Islip, New York, but excluding all office clerical employees, managerial employees, guards and supervisors as defined in Section 2(11) of the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

On or about November 1, 2004, the Union, by letter, requested from the Respondent a date, time, and location to commence bargaining for an initial collective-bargaining agreement. On or about November 15, 2004, the Union, by letter, repeated its request that the Respondent contact the Union and make arrangements to commence bargaining for an initial collective-bargaining agreement. Since about November 1, 2004, the Respondent has failed and refused to respond to the Union's requests to bargain, and has failed and refused to meet with the Union and commence negotiations toward an initial collective-bargaining agreement. We find that this failure and refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(1) and (5) of the Act.

CONCLUSION OF LAW

By failing and refusing since November 1, 2004, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(1) and (5) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, North American Enclosures, Inc., Central Islip, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Local 348-S, United Food and Commercial Workers Union, AFL-CIO, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time production and maintenance, shipping and receiving, plant clerical employees, and drivers employed by the Respondent at its premises located at 65 Jetson Lane, 85 Jetson Lane, and 973 Motor Parkway, Central Islip, New York, but excluding all office clerical employees, managerial employees, guards, and supervisors as defined in Section 2(11) of the Act.

(b) Within 14 days after service by the Region, post at its facilities in Central Islip, New York, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 1, 2004.

⁴If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. July 29, 2005

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain with Local 348-S, United Food and Commercial Workers Union, AFL-CIO, as the exclusive bargaining representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time production and maintenance, shipping and receiving, plant clerical employees, and drivers employed by us at our premises located at 65 Jetson Lane, 85 Jetson Lane, and 973 Motor Parkway, Central Islip, New York, but excluding all office clerical employees, managerial employees, guards, and supervisors as defined in Section 2(11) of the Act.

NORTH AMERICAN ENCLOSURES, INC.